

Representing Parents in Child Protective Proceedings: How Effective Advocacy Can Further the Best Interests of Children

Training Hypothetical
In re: DeQuan Jenkins
In re: Janay Jenkins

Iowa Children's Justice Parent Attorney Training
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INSTRUCTIONS

In re: DeQuan Jenkins

In re: Janay Jenkins

You have been appointed as the attorney for LaToya Jenkins in a child protective case involving her children, DeQuan and Janay Jenkins. The Department of Human Services seeks continued removal and jurisdiction of both children.

Stage I—Initial Client Meeting: Please review the attached petition and spend 15 minutes preparing for your first client meeting with Ms. Jenkins, which will likely take place in the hallway outside the courtroom. What information do you need from her? What issues will you address? What questions do you anticipate being asked? One (or more) of you will be asked to conduct the meeting.

Stage II—Removal Hearing: You are able to gather information summarized in the document “Conversation Prior to the Removal Hearing.” After reviewing the document, your group will address two questions: 1) whether to contest removal; and 2) if removal is confirmed, what are your client’s best arguments regarding placement and visitation?

Stage III—Adjudication Trial: You will get the opportunity to plan for the adjudication hearing, and then practice your cross examination skills. You have a copy of the police report drafted by Officer Smith and a transcript of his direct examination. Spend twenty minutes drafting a cross examination. One (or more) of you will be asked to do the cross examination.

Stage IV—Disposition/Review: You learn information listed in the document “Additional Facts Before Dispositional Hearing.” After reviewing the document, your group will break into smaller groups to address questions related to disposition. Afterwards, we will come together and discuss these issues.

As you work through the exercises, see if you can identify relevant court rules, statutes or case law. Years in the materials are noted in the form of Y-x where “x” is how many years ago it was; i.e. Y-1 is last year.

Good luck.

PETITION ALLEGATIONS

TO WIT:

In the matter of DeQuan Jenkins (DOB 6/5/Y-9) and Janay Jenkins (DOB 4/5/Y-7);

The Petitioner alleges that the Children are subject to the jurisdiction of Polk County Juvenile Court.

The Petitioner alleges the Children are Children in Need of Assistance pursuant to Iowa Code Chapter 232.2(6)(c)(2) because they have suffered or are imminently likely to suffer harmful effects as a result of the failure of the Child's parent, guardian, custodian or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child; and 232.2(6)

1. LaToya Jenkins is the mother of DeQuan Jenkins and Janay Jenkins.
2. Paul White is the father of Janay.
3. Prior to the petitioning of this case, DeQuan and Janay resided with their mother.
4. Yesterday, DeQuan and Janay were left alone in their mother's home sometime between 8:00 a.m. and 4:30 p.m. while the mother was at work. At approximately 4:30 p.m., DeQuan called 911 and reported that he accidentally shot his sister Janay. When the police arrived at the mother's home, they found Janay bleeding as a result of gunshot wounds to her hand and chest. Janay is currently at the University of Michigan Hospital in critical condition.
5. The gun DeQuan used to shoot his sister was under the mother's bed on the floor, within easy reach of the children. When police searched the mother's home, they found a white powdery substance, baggies, large amounts of cash and two guns (including the gun involved in the shooting).
6. LaToya Jenkins has a criminal record and prior history with child protective services.

The Petitioner finds that the above named minors are at risk of harm. The Petitioner respectfully requests that the court take jurisdiction of the children and place them under the care and supervision of the Department of Human Services. It is requested that the Department of Human Services be allowed to determine future planning and placement for the children pending the next court review.

Respectfully submitted,

Nancy Poole
Children's Protective Services

STOP

CONVERSATIONS PRIOR TO THE REMOVAL HEARING

You have thirty minutes before the Removal hearing and get a chance to speak to your client (LaToya Jenkins), her mother (Denise Jenkins), Janay's father (Paul White), and the Child Protective Investigator (Nancy Poole).

Conversation with LaToya Jenkins

LaToya is 29 years old and has always taken care of DeQuan and Janay. DeQuan's father is deceased. Janay's father plays an active role in her life by helping financially and taking her on weekends. He is not Janay's legal father. LaToya just started working as a medical assistant at Regina's Nursing Home a month ago and makes \$25,000 a year. She is currently in a probation period at work which permits her employer to fire her immediately if she is late. Prior to this, LaToya was working at a temp agency doing secretarial work.

Yesterday, LaToya arranged for her boyfriend, Tyrone Foster, to watch the kids and went to work shortly before he arrived at the house. She called him as she was leaving and he told her that he was on his way. He lives about ten minutes away, though he stays over occasionally. She called several times during the day to check on the kids and every time, they stated that Tyrone was there watching them. LaToya spoke to Tyrone during one of those calls, who indicated that everything was okay. She has been dating Tyrone for 2 ½ years. He is a salesman and as far as LaToya knows does not have a criminal record. Tyrone watches the children everyday after school and there have been no incidents. He also helps out financially with the children. LaToya had no idea there were any guns or drugs in the home. LaToya has not heard from Tyrone since the incident and does not know his whereabouts. She is extremely upset.

LaToya first heard about the incident when she received a phone call from the police yesterday evening around 5:00 pm as she was about to leave work. The police stated that Janay was in the hospital, DeQuan was being placed in a foster home and that the County Attorney would be filing a CINA Petition. She was specifically told that she could not visit either child until after today's court hearing.

LaToya wants both children returned home today. If LaToya cannot have the children placed with her, she wants the kids to go with their maternal grandmother, Denise Jenkins, who they visit two or three times a week. Ms. Jenkins only lives ten minutes away. If that can't happen then she doesn't mind DeQuan going with Ms. Jenkins and Janay going with her father. She does not want either child going into foster care with strangers. She also wants unsupervised visits as frequently as possible with both kids and wants to be able to visit Janay in the hospital.

LaToya has no criminal convictions but was arrested for drug possession a few years back. Apparently, she was in a car in which one of the other passengers had marijuana in his possession and she was arrested as well. The case was dismissed after the prosecution learned that she didn't know there were drugs in the car.

The kids do very well in school. Janay is in the 2nd grade and DeQuan is in the 4th grade. They both attend Monroe Elementary School and received perfect attendance awards this past year.

LaToya denies any prior history with child protective services. She does remember, however, that a social worker showed up a few years ago asking whether the children were left home alone but when she and the children denied it, the worker went away and never came back. She suspects that a neighbor, with whom she doesn't get along, made the false accusations.

Conversation with Denise Jenkins

Denise is 56 years old, does not have a criminal record and has never been involved with DHS before. She works at a local grocery store. She makes \$10/hour and works forty hours a week. She is willing to take both children and is willing to become licensed as a foster parent, if necessary. She lives in a two bedroom apartment and has two children (ages 8 and 6) who already live in the home. She has a guardianship over both children. Ms. Jenkins thinks that her daughter is an excellent mother and doesn't know anything about Mr. Foster (Ms. Jenkins' boyfriend). She's had some contact with Mr. White and believes he parents appropriately. Prior to the incident, Denise saw Janay and Dequan about two to three times a week. She only lives a few minutes away.

Conversation with Paul White

Paul White is thirty-two years old and lives with his mother in Toledo, Ohio. He lives in a four bedroom house that he is in the process of buying. Janay is his only child and he sees her twice a week. He also takes Janay for at least two weekends a month. He sends LaToya \$500 a month for Janay but there is no child support order. He was never married to LaToya and paternity was never legally established. In general, he believes that LaToya does a good job parenting Janay and he has a cordial relationship with her. He didn't know anything about LaToya's boyfriend since the two of them stay out of each other's personal business and most of their discussions involve Janay. Paul had no idea that there were guns and drugs in the house. He has no idea about what happened yesterday and is highly concerned about his daughter's condition. He wants Janay placed with him immediately. He was able to visit Janay in the hospital last night. Her condition is steadily improving.

Paul served for four years in the Navy. Since getting out, he has worked as a computer technician for a small company called American Securities Inc. He earns approximately \$50,000 per year. He has no criminal history nor has he ever been involved in the child protective system. He says the same about his mother.

Conversation with Nancy Poole

Ms. Poole is the child protective services (CPS) worker with DHS. She has worked with CPS for the past five years. Yesterday, CPS received a call on its hotline and learned that Janay and DeQuan had been left at home alone and that DeQuan shot Janay with a gun he found in the house. Ms. Poole was assigned to investigate this case further. In the course of her investigation, she spoke with Officer Smith, who responded to the 911 call made by DeQuan after the shooting. On arrival, Officer Smith found a white powdery substance in baggies, large amounts of cash and additional guns in the house. The guns were under the mother's bed. The children also told Officer Smith that they had been left alone for some time period during the day. Officer Smith told Ms. Poole that DeQuan was very upset about the incident and did not want to be removed from his mother's care. Her information about the allegations is based on the investigation by Officer Smith. At this point, she does not know whether the white powdery substance they found was drugs since testing had not yet come back.

Janay was transported directly to the hospital and DeQuan is in a foster home. Janay is in stable condition and it is anticipated that she'll be ready for discharge in the next day or two. Once Janay is ready to be released, she will be placed in a foster home as well. Ms. Poole cannot guarantee that the children will be placed in the same home. Ms. Poole spoke briefly with Denise Jenkins and Paul White about their current living situations to see if either would be a good placement for the children. At this point she feels as if both of them may be appropriate placements but cannot recommend either right now because she doesn't know enough about them. She has not had time to do a home study of either and does not have police or CPS clearances of anyone. For Mr. White, a request for a home study under the Interstate Compact on the Placement of Children must be made since he lives in Ohio. Ms. Poole suspects that both of them knew about what was going on in the home and failed to take measures to protect the children. Placement with the mother is not an option due to the severity of the allegations in the petition. Ms. Poole believes that the mother knew about the guns and drugs in the home and

knew that the children would be home alone in that type of environment. As a minimum, prior to having the children returned home, the mother will have to complete parenting classes, a psychological evaluation, counseling, and drug testing.

This is all of the information you are able to collect prior to the preliminary hearing.

Questions for small group discussion:

1. Do you contest removal? Why or why not? If the petition is granted, the Department will request out of home placement of the children. How do you respond?
2. If out of home placement is required, what is your position about placement and visitation? What arguments can you make to advance your client's positions? What arguments will be made by the other side?

STOP

ADDITIONAL FACTS BEFORE ADJUDICATION

At the removal hearing, the Court confirms removal and orders that the children be placed in foster care pending the completion of home studies of Denise Jenkins and Paul White. The Court orders the DHS to submit a request for a home study pursuant to the ICPC for Mr. White. The Court will revisit placement at the adjudication hearing. The Court orders paternity testing of the putative father Mr. White. The Court orders LaToya Jenkins to submit to weekly random drug screens, at the Department's request. Compliance with all other aspects of the case service plan is voluntary. Ms. Jenkins is permitted weekly supervised visits at the Department and is permitted to visit Janay at the hospital as long as DHS supervises the visit. The pretrial hearing will be held in four weeks.

The day after the hearing, Nancy Poole conducts a forensic interview of DeQuan at a local Child Advocacy Center. All you know about the interview is from what Ms. Poole tells you. She said that DeQuan specifically told her that both he and his sister were left home by themselves on previous occasions when their mom was at work and that they were alone when they found the guns under the bed. DeQuan said that they were playing hide and go seek in the house when they found the guns. Janay was playing with the gun and DeQuan went to grab it out of her hands. The gun went off when he tried to take it from her. You ask Ms. Poole for a copy of the tape and she refuses to give it to you or let you view it in her office. She says it is confidential. You follow up with a written discovery letter both to Ms. Poole and the County Attorney but have not received any documents.

Your client submits to four drug screens. She tests positive for marijuana in her first screen and negative twice. She fails to show up to one screen. Your client tells you that the marijuana was in her system from use before the removal hearing but that she is no longer using. She missed the drug screen because of transportation problems. Her car broke down. Your client also begins attending parenting classes through Children and Families of Iowa. During one of the classes, while discussing the impact of drug use on a child's development, she admits to the teacher that she used marijuana four weeks ago, before her children were removed.

You conduct your own investigation of the matter. A criminal history check of Mr. Foster, mom's boyfriend, reveals that he has been convicted for possession and distribution of cocaine on 3 occasions. His last conviction was four years ago, an offense for which he spent a year in jail. He has not been arrested in the past three years. Your client states that she had no knowledge of his criminal history. They have been dating for 2 and a half years. Mr. Foster cannot be located. School records corroborate that the children do extremely well and have exemplary attendance. The teachers are stunned by what happened. You also speak to Ms. Jenkins' employer who tells you that she has been working there for about a month and that she is a probationary employee which permits him to fire her if she is late one time. Thus far, Ms. Jenkins has shown up to work on time every day and has been a good employee.

You speak to Ms. Poole to get an update on the case. She states that Janay has been released from the hospital and was placed in a foster home, different from that of her brother. Sibling visits have not occurred due to scheduling problems. Ms. Jenkins has been visiting the children weekly at the agency but DHS is concerned because she is showing favoritism towards Janay during the visits, which reflects poor judgment. Additionally, in light of the positive drug screens, Ms. Poole is going to request that visits be suspended until Ms. Jenkins' has three consecutive negative drug screens. Ms. Jenkins reports that department policy prohibits visits between children and parents who are testing positive for drugs. Ms. Poole completed home studies of the maternal grandmother and will not be recommending placement of the children with her at this time. The grandmother's apartment is too small for four children (it only has two bedrooms). The ICPC request for Mr. White is still pending and he has yet to establish paternity. The Department is still investigating whether either the grandmother or the father

had knowledge of the condition of Ms. Jenkins' home.

You speak to the Assistant County Attorney who offers you the option of stipulating to the petition in light of the possibility that Ms. Jenkins may face criminal charges as a result of the incident.

Questions for small group discussion:

1. What preparation is required for the Adjudication Hearing? Who do you need to interview? What other steps do you need to take?
2. A theory of the case is your explanation of what happened and why. Based on the information you have collected, what is your one sentence theory of the case? What is the Department's theory of the case? What witnesses will you call to support your theory?

STOP

Police Report of Officer Smith

I am a police officer with the Des Moines Police Department and responded to a 911 call regarding a possible shooting. I received information about the call at 4:30 p.m. and arrived at the house at approximately 4:35. When I arrived, I saw Janay Jenkins lying on the floor with a gunshot wound to her chest and her brother DeQuan trying to help her. DeQuan was crying and Janay was unconscious. There was blood all over the floor. No other adults or children were present in the home. I immediately called for an ambulance and also notified Child Protective Services. I spoke to the on-call worker, Nancy Poole, about the situation. The ambulance arrived at 4:45 and immediately took Janay to Blank Children's Hospital.

I searched the house and found a white powdery substance, baggies, large amounts of cash and an additional gun under the mother's bed within easy reach of the children. The items were in a large box marked "private". Other items under the bed included a large stuffed animal, Monopoly Board Game, pillows and blankets, a handbag, and a crumbled up piece of paper titled "LaToya's Jenkins' Resume." Subsequent testing by the field office revealed that the white powdery substance was cocaine and that the mother's fingerprints were not on any of the items. At this point, it is unclear as to whose fingerprints were on the items.

I was unable to question DeQuan because he was too distraught. He kept on asking for his mother and stated that he did not want to be taken from her. He said this repeatedly when Ms. Poole came to pick him up. It is recommended that an interview at the Child Advocacy Center be conducted immediately.

The phone rang several times while I was there but I did not answer it due to the urgency of the investigation. At approximately 5:00, I contacted LaToya Jenkins at her job at Regina's Nursing Home, told her what had happened and that Janay was taken to the hospital and DeQuan was placed in foster care by Child Protective Services. She asked about seeing her children but I instructed her to sort that issue out with CPS and the Court. I informed her that a hearing would be held the following day and to contact Ms. Poole immediately. I arranged to speak with Ms. Jenkins later on that evening at 7:00 but she failed to appear at my office. She called me on my cell phone at 7:05 stating that she was trying to arrange to see her children and that she would prefer speaking to me after she had the assistance of an attorney.

The house was clean and there appeared to be sufficient food and clothing. DeQuan and Janay had separate rooms and each was clean and full of toys. Both children had sports trophies in their rooms and awards for academic achievement. A search of Ms. Jenkins' closet revealed male clothing in the form of shoes, shirts, and belts. Men's aftershave lotion was found in the bathroom. A dry erase board in the kitchen listed "important phone numbers" for the children and included numbers to the local police station, the hospital, Denise Jenkins and Regina's Nursing Home. Displayed on the kitchen were also pictures of DeQuan, Janay, Latoya Jenkins and a man identified to me by DeQuan as Tyrone Foster.

Based on my investigation, it appears as if the mother was reckless in leaving the children in a dangerous environment.

Date

Officer Smith

Direct Examination of Officer Smith

Good afternoon Officer Smith.

Please state and spell your name for the record
Officer Smith

How old are you Officer Smith?
38

Where do you currently work?
Des Moines Police Department

How long have you worked there for?
10 years

What do you do?
I'm a police officer

Are you familiar with Janay and DeQuan Jenkins?
Yes

How?
I was the responding officer to a shooting that took place involving them.

I'd like to talk about the shooting.

Tell us what happened

I responded to a 911 call regarding a possible shooting. I received information about the call at 4:30 and arrived at the house at approximately 4:35. When I arrived, I saw Janay Jenkins lying on the floor with a gunshot wound to her chest and her brother DeQuan trying to help her. DeQuan was crying and Janay was unconscious. There was blood all over the floor. No other adults or children were present in the home. I immediately called for an ambulance and also notified Child Protective Services. I spoke to the on-call worker, Nancy Poole, about the situation. The ambulance arrived at 4:45 and immediately took Janay to the Blank Children's Hospital.

When you arrived were there any other adults in the home?
No

Were there any other children in the home?
No

How long were you at the home?
1 hour

During the time you were there, did any family member come to the home?
No

Did Ms. Jenkins, the mother of the children, call the home?

No

Did you subsequently call Ms. Jenkins?

Yes

Did you speak to her? What did you say?

At approximately 5:00, I contacted LaToya Jenkins at her job at Regina's Nursing Home, told her what had happened and that Janay was taken to the hospital and DeQuan was placed in foster care by Child Protective Services. She asked about seeing her children but I instructed her to sort that issue out with CPS and the Court. I informed her that a hearing would be held the following day and to contact Ms. Poole immediately. I arranged to meet with Ms. Jenkins later on that evening at 7:00.

Did she show up to that appointment?

No

Did you search the house as part of the investigation?

Yes

What, if anything, did you find?

I searched the house and found white powdery substance, baggies, large amounts of cash and an additional gun under the mother's bed within easy reach of the children. The items were in a box.

Were there any other items under the bed? What?

A large stuffed animal, Monopoly Board Game, pillows and blankets, a handbag, and a crumbled up piece of paper titled "LaToya Jenkins' Resume."

Officer Smith, based on your ten years as a police officer, do you have concerns about the home environment? What are they?

It is dangerous for two children to be in a home with guns and drugs within their reach. A parent has the responsibility to make sure that everything is safe in the home and to make sure that she knows what's going on in the home. Ms. Jenkins failed to do this and we now have an injured kid who is fighting for her life. A good parent would never have let this happen.

Prepare a cross examination of Officer Smith

STOP

ADDITIONAL FACTS BEFORE DISPOSITIONAL HEARING

Your client loses the adjudication hearing and the Court assumes jurisdiction of Janay and DeQuan. At the trial, the Court heard testimony from Tyrone Foster, Ms. Jenkins' boyfriend, who suddenly appeared and admitted that the guns and the drugs were his and that he had brought it into the house the morning of the incident. Mr. Foster testified that Ms. Jenkins had no knowledge of the guns or the drugs and that she was a great mother to the children. He also stated that he was supposed to watch the children that day but that he left the home on a few occasions to run errands. Despite Mr. Foster's testimony, the Court finds that your client was neglectful for failing to know about the drugs and guns in the home that resulted in unsafe living conditions. The Court schedules a dispositional hearing in four weeks.

The children remain in licensed foster placements and Ms. Jenkins visits them weekly. At the pretrial hearing, the Court denied the Department's request to suspend visits until the negative drugs screens were received. The social worker reports that the visits are going very well and the children are bonded to their mother. The GAL states that both children wish to return to their mother's home and that Janay also expresses a desire to be with her father, who has been visiting her, supervised at the agency. Paternity testing establishes that Mr. White is Janay's father.

Ms. Jenkins has completed the six week parenting class. She has also tested negative on all of her drug screens since the pretrial hearing. She continues to work at Regina's Nursing Home. Ms. Jenkins is willing to have in-home services if the children are reunified but does not want to complete additional services because she doesn't think she needs to do anything else.

You speak to the case worker who outlines the additional services she'd like your client to participate in: continued random drug testing, substance abuse treatment, a psychological evaluation, and individual and family therapy. The worker is concerned about your client's tendency to associate with dangerous men. She will only recommend reunification after these services are completed. She says she is really busy, but will likely have the social history and case plan available a couple of days before the dispositional hearing. The home study of Mr. White was completed by a caseworker in Ohio. The worker denies the placement because of a concern that Mr. White knew about the conditions in Ms. Jenkins' home which raises questions about his ability to make good decisions for the child.

Question for small group discussion: You have to prepare for a meeting with your client about the dispositional hearing. What do you tell her about the hearing? What are her options at the hearing?